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Public Policy in Uzbekistan Legal System

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Abstract: Business development and foreign investment are top priorities for Uzbekistan, supported by recent reforms and strategies. As international trade grows, effective systems for resolving cross-border disputes, like international commercial arbitration, are crucial. A key challenge is the enforcement of arbitral awards, especially regarding the unclear concept of public policy (PP). Rooted in Soviet law, PP has been interpreted inconsistently, and modern Uzbekistan lacks clear guidance from the Supreme Court. Clarifying PP would help ensure consistent court practice, align with international standards, and strengthen the country's investment climate.

Keywords: Public policy; Enforcement; International Commercial Arbitration; Uzbekistan

The further development of business is one of the major issues for Uzbekistan. A number of legislative acts have been adopted by the parliament of Uzbekistan to secure and promote the entrepreneurship and enhance investment attractiveness of the country. The Strategy of Actions for 2017-2021 indicated priorities in expansion of foreign trade, modernization of technologies and others. The rapid growth of foreign economic activities requires the establishment and proper function of the international dispute resolution systems, such as ICA. At the same time, it is necessary to eradicate challenges in the enforcement of ICA awards and establish unbiased concept of public policy (PP) in the country.

The concept of PP in Uzbekistan legislation linked its origin to the Soviet Union legal system. Unfortunately, there is a little data known on PP of the USSR. Under private international law of the Soviet Union, there must be a treaty between USSR and relevant state in order to recognize and enforce court decisions. USSR had several international treaties with other socialistic countries in terms of legal and judicial assistance which incorporated the recognition, enforcement procedures and PP provisions. There had not been a historical need to clarify PP at that time. However, some Soviet period scholars expressed their views on PP. L.Lunts and I.Pereterskiy explained that "PP is a principle that violates private international law, the Constitution should be a primary source while determining whether a foreign court judgment contradicts PP of a state or not". Contrary, G.Matveev provided that PP should not be viewed as a rule that violates private international law. He noted that PP should be considered as a safety net by state court judges to escape from any intervention or threat of foreign law.

In addition, Russian scholar A.Muranov explained that refusal of an arbitral award cannot be based on the distinction between political or economic policies of a country and USSR. But A.Muranov did not detailed that USSR applied PP against recognition and enforcement based on analogy. Other well-known researchers of private international law of USSR including L.Lunts, A.Garnefskiy and B.Boguslavskiy explained that PP can be seen and noticed when the application of foreign law is sought. Additionally, Russian scholar N.Viktorova stated that there is no an explanation of PP in Russian legislation and it is interpreted by state court judges widely.

In the modern Uzbekistan there is not clear concept of PP and the Supreme Court of Uzbekistan has not provided its unambiguous guidance to other lower level state courts. Uzbek well-known researchers O.Okyulov and K.Rakhmonkulov discussed their perspective as following: "the lack of comprehensible notion of PP in procedural legislation and various application by courts in practice make PP pressing issue for Supreme Court to give a clear-cut explanation on PP". It is not guaranteed

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that state courts in Uzbekistan will interpret it narrowly in practice, on contrary, it might be subject to a broad and different interpretation. The Supreme Court of Uzbekistan must take responsibility and clarify this concept of PP by taking into account international practice and liberalized attitude. This can help to form unified implementation of PP by national courts.

Definition of public policy in Uzbekistan legislation

Application for the enforcement of an ICA award is considered by economic courts within six months from the date of its receipt by courts. After reviewing a case, economic courts issue a ruling on recognition and enforcement or on declining the recognition. Procedural legislation of Uzbekistan establishes grounds for declining the enforcement of an award. Along with other provisions that are listed in above chapters, EPC stipulates following grounds for refusal, if:

1. an object of a dispute cannot be the subject of arbitration under the legislation of Uzbekistan;
2. recognition and enforcement of an award contradicts or threatens PP of Uzbekistan;
3. the period of compulsory enforcement of an award has expired.

Ambiguous nature of PP gives a right to judges to broadly interpret it and they can decline the enforcement upon this basis. Art. 256 of EPC should be clearly interpreted by the Supreme Court of Uzbekistan. Since, uncertainty of that article could lead judges to reject recognition of ICA awards even they do not contradict to PP of Uzbekistan.

Public policy as a factor in enforcing ICA awards in Uzbekistan

Pursuant to Art. 14.2 of the Plenary decision of Higher Economic Court, national courts can decline the enforcement of arbitral awards which are incompatible with PP of Uzbekistan under Art. V of NYC. Moreover, Art. 256 of EPC defines that the enforcement of an ICA award will be declined, if it violates PP of Uzbekistan. However, above provisions are very general, lacking clear-cut scope of issues and there are no reported cases concerning the application of that doctrine. When developing the notion PP in Uzbekistan, it is important to study international experience and best practices.

The unclear concept of PP is indicated in the Civil Code of Uzbekistan. Art. 1164 of Civil Code defines that “foreign law is not applicable when its application would contradict the foundations of law and order (public order) of the Republic of Uzbekistan. In this case, the law of the Republic of Uzbekistan applies.” Second part of this article provides that “refusal to apply foreign law should not be grounded only on differences between legal, political or economic system of a foreign country from the legal, political or economic system of the Republic of Uzbekistan.” From this rule it is understandable that the mere difference in political, legal or economic systems cannot be ground for claiming violation of PP. For instance, if a state of origin of an award is a socialist country, the state courts of Uzbekistan which declared itself as democratic country cannot base PP on the difference in the political systems.

According to the interpretation of scholars on Art. 1164 of the Civil Code, the concept of public order is the reflection of the concept of “imperative norms” in specific matters. Many researchers view imperative norms as a type of PP. The French Civil Code served as the basis for the development of the concept of public order, in which laws relating to PP and good manners cannot be repealed through private agreements. In other words, any agreement between individuals is deemed invalid if it is contrary to the laws that constitute the basis of PP and good manners. The impossibility of explaining the concept of PP to some extent is explained not only by the fact that this concept is located at the intersection of law, economics, politics, ethics, morality, philosophy, but also by the fact that views on the foundations of law and order change over time. For example, in some countries a single sex marriage is legally accepted, however in other countries the same-sex marriages are strictly forbidden. In Uzbekistan such practice also legally and practically not acceptable. The main question here is

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focused on recognition (or not recognition) the legal consequences of this marriage. Recognition of such alliances in individual states can lead to extremely complex problems in private international law. For example, the surviving party may want to inherit real property in a state where such marriages are not recognized or one of the parties of this marriage may marry again in other state where such single-sex marriages are forbidden or in a country where it is allowed. The only legal basis for not recognizing the consequences of such marriage may be a ground of PP of a state.

EPC and CPC of Uzbekistan amended in January 2018, the grounds to refuse ICA awards defined in Art. 370 of CPC and in Art. 256 of EPC. They both merely list that contradiction to PP is the basis for declining the enforcement of an award.

Implication of international public policy in Uzbekistan

The notion of IPP is constituted from a collection of fundamental legal principles related to all or at least the most principal notions of equity and justice. This is mainly due to the development of international commerce, which has led to a degree of co-operation between members of the international community. Therefore, development of the more internationalized PP in Uzbekistan helps to respond to the demands of the international business circle and thereby avoid the confusion caused by the existence of various national PP rules such as different trade prohibitions.

Achieving such a harmony is possible by reducing the applicability of national PP rules in international transactions, as compared to their wider use in domestic relations. Also, this is achievable by seeking to find mutual principles of justice and morality common to many countries. It could be argued in this respect that if there will be a contradiction between domestic PP and IPP rules, then IPP should prevail. However, despite these propositions, the notion remains at heart problematic due to the sheer diversity of fundamental issues between states, such as different beliefs, traditions, economic policies, and political trends which may interrupt the approach towards establishing a new concept of IPP. For example, EPC of Uzbekistan defines that if any decision of court or arbitration “contradicts to the sovereignty, security and fundamental principles of law of the Republic of Uzbekistan”, its enforcement would be declined on PP ground. Needless to say, even CIS countries have historical similar background but there are fundamental differences in each of them which can help to generate a clear picture of how the issue of PP is critical.

It is widely recognized that IPP serves the international community by its potential to play the same role as domestic PP in national relations, although the difficulties that may arise in developing such rules have also been recognized most notably by Okezie Chukwumerije. He demonstrated that as PP of a state presents public interests and morality of a specific community, similarly IPP embodies the same role for foreign community. Klaus Berger, mentioned that “IPP rules have been developed within the general principles of law and agreed by many states. …This must not frustrate the acceptance and existence of such rules.”

Alan Redfern and Martin Hunter also put description that IPP would not concern domestic policy nature, it deals with issues in broader scenario of public interest, morality, and safety concerns. Finally, through different observations it can be argued that norm of IPP becoming acceptable with exponential rate, developing into a true IPP. This can also be viewed through the development of international conventions and statutes that relate to the recognition of ICA awards.

It is noted by Sever that “transnational PP generally refers to a set of rules and values that are agreed and widely practiced by the international community, entailing standards, norms and customs,” whereas Buchanan claims that “notion of transnational PP is argued to depict the existence of a global consensus on universal standards or accepted norms of conduct that need to be applied”. Gary Born further points out that “while the conventional notion of IPP is still based on domestic PP, transnational PP originates in substantial norms derived from international sources and not from

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domestic ones hence making it clearly international". In other words, the formation of the notion of IPP can create favorable conditions to business environment not only in Uzbekistan, but also to majority states of the world and help to escape from complicated domestic regulations constituting PP.

Summary

To sum up, in the scene of ICA, not all aspects of a case will be related to one particular country but it will incorporate at least two countries. Thus, relations in ICA involve different states, parties might have distinct nationalities or domicile in various countries, the main contract and transactions of a deal may be produced or delivered to different countries. Therefore, defining the clear concept of PP is complicated, as it represents fundamental standards in each community and such standards could only be applicable for a place and time in which they employed. In addition, a party who is interested in enforcing an ICA award should consider the national approach of a country towards the enforcement of ICA awards. That means, whether the attitude of state courts is more liberal or parochial towards the application of PP. Consequently, the development of IPP can assist to ease the problems related to the enforcement of ICA awards worldwide.

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Volume: 5 Issue: 01 | Jan–2026 ISSN: 2720-6882
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